

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Frank Montgoris	Team: Squad #12	CCRB Case #: 201805726	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 07/06/2018 4:20 PM	Location of Incident: In front of 212 Throop Avenue; 79th Precinct stationhouse	Precinct: 79	18 Mo. SOL 1/6/2020	EO SOL 1/6/2020	
Date/Time CV Reported Fri, 07/06/2018 9:00 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 07/16/2018 2:06 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael York	30310	956172	079 PCT
2. POM Patrick Burnett	30205	932383	079 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael York	Force: In front of 212 Throop Avenue, in Brooklyn, Police Officer Michael York used physical force against § 87(2)(b)	
B.POM Patrick Burnett	Force: In front of 212 Throop Avenue, in Brooklyn, Police Officer Patrick Burnett struck § 87(2)(b) with an asp.	
C.POM Michael York	Abuse: In front of 212 Throop Avenue, in Brooklyn, Police Officer Michael York failed to provide medical treatment for § 87(2)(b)	
D.POM Patrick Burnett	Abuse: In front of 212 Throop Avenue, in Brooklyn, Police Officer Patrick Burnett failed to provide medical treatment for § 87(2)(b)	
E.POM Michael York	Abuse: In front of 212 Throop Avenue, in Brooklyn, Police Officer Michael York refused to provide medical treatment for § 87(2)(b)	
F.POM Michael York	Abuse: At the 79th Precinct stationhouse, Police Officer Michael York refused to provide medical treatment for § 87(2)(b)	
G.POM Patrick Burnett	Abuse: At the 79th Precinct stationhouse, Police Officer Patrick Burnett refused to provide medical treatment for § 87(2)(b)	

### Case Summary

Sgt. Kieran Tracy, of the 79<sup>th</sup> Precinct, reported this incident with the IAB Command Center via telephone on behalf of § 87(2)(b) on July 6, 2018, generating log number 18-26348. Also, § 87(2)(b) a reporting non-witness, filed a duplicate complaint with IAB via a 311 complaint on July 13, 2018, generating log number 18-27887. The CCRB received this case on July 16, 2018.

On July 6, 2018, at approximately 4:20 p.m., PO Michael York and PO Patrick Burnett, of the 79<sup>th</sup> Precinct, stopped § 87(2)(b) in front of the NYCHA Tompkins houses at 212 Throop Avenue, in Brooklyn, for purchasing narcotics in a hand-to-hand transaction. PO York used physical force against § 87(2)(b) (**Allegation A: Force, § 87(2)(g)**). PO Burnett struck § 87(2)(b) with his asp (**Allegation B: Force, § 87(2)(g)**). PO York and PO Burnett failed to obtain medical treatment for § 87(2)(b) (**Allegations C and D: Abuse of Authority, § 87(2)(g)**). PO York allegedly refused to provide medical treatment for § 87(2)(b) (**Allegation E: Abuse of Authority, § 87(2)(g)**).

At the 79<sup>th</sup> Precinct stationhouse, PO York and PO Burnett refused to obtain medical treatment for § 87(2)(b) (**Allegations F and G: Abuse of Authority, § 87(2)(g)**). § 87(2)(b) was arrested and charged with § 87(2)(b). § 87(2)(b) did not sustain any physical injuries, but was transported to § 87(2)(b) and vomited up two glassines of heroin.

This incident was captured on PO York's and PO Burnett's body-worn cameras (BWCs). NYCHA footage was obtained from the Tompkins houses, but no FADO allegations were captured due to the positioning of the cameras.

### Findings and Recommendations

**Allegation A – Force: In front of 212 Throop Avenue, in Brooklyn, Police Officer Michael York used physical force against § 87(2)(b)**

**Allegation B – Force: In front of 212 Throop Avenue, in Brooklyn, Police Officer Patrick Burnett struck § 87(2)(b) with an asp.**

On August 21, 2018 during a sworn statement via video teleconference, § 87(2)(b) who is 6'3" tall and 284 pounds, alleged that he was walking down Throop Avenue when PO York and PO Burnett approached him. PO York told § 87(2)(b) "Come here." § 87(2)(b) asked, "What's the problem?" § 87(2)(b) began backpedaling away from the officers in a faster than normal pace, and backpedaled across the street. § 87(2)(b) ultimately denied running away from the officers. PO York then grabbed § 87(2)(b)'s right wrist, and § 87(2)(b) reacted by moving his arm back and forth and asking, "Why?" § 87(2)(b) ended up on the ground, providing three explanations over the course of the interview as to how this came to be: he first stated that he did not know how he ended up on the ground, but later stated that PO York pushed him on his side down to the ground. However, § 87(2)(b) ultimately clarified that he went to the ground as a result of losing his balance. § 87(2)(b) initially stated that he was immediately handcuffed after going to the ground, but later stated that backup units arrived and approximately four officers were "twisting and turning" his arms to try to get him into handcuffs. § 87(2)(b) acknowledged moving his upper body back and forth because he did not understand why he was being handcuffed. § 87(2)(b) was ultimately handcuffed, and denied any additional force was used against him. He denied sustaining any injuries (Board Review 01).

PO York's BWC footage, which was edited via Snag-It, shows § 87(2)(b) backpedaling away from officers while PO York is telling him, "Relax. It's not that big of a deal." § 87(2)(b)

then begins sprinting across the street towards the opposite sidewalk. PO York's hands are seen attempting to grab § 87(2)(b) by his shirt from the back before the camera ultimately falls to the ground. PO Burnett's BWC footage, also edited via Snag-it begins with § 87(2)(b) bent over face first against the hood of a parked car while officers are seen grasping his arms to handcuff him. § 87(2)(b) turns around to face the officers briefly, but he is handcuffed by PO Burnett after 43 seconds of struggling. No strikes of § 87(2)(b) are captured on camera, but at the end of the video, PO Burnett is seen picking up his expanded asp off the ground. Both videos depict PO York and PO Burnett as the only officers involved in apprehending and handcuffing § 87(2)(b) and neither video depicts § 87(2)(b) on the ground during the apprehension (Board Reviews 04 and 05).



PO York BWC1.mp4



PO Burnett BWC1.mp4

PO York, who is 6'1" tall and 250 pounds according to his CCRB interview sheet, testified to the CCRB that he and PO Burnett were sitting in their RMP when PO Ted Holway, a plainclothes officer observing narcotics hand-to-hand transactions, described § 87(2)(b) as the buyer in a transaction. PO York and PO Burnett drove up to the location and PO Burnett observed § 87(2)(b) who fit PO Holway's description. The officers attempted to stop § 87(2)(b) but § 87(2)(b) began backpedaling. PO York told § 87(2)(b) "Stop. Stop backpedaling. It's not that big of a deal." § 87(2)(b) then took off sprinting across the street, crossing over to the other sidewalk. Both officers chased after § 87(2)(b) and PO York attempted to grab him by his arm and football jersey to stop him unsuccessfully. § 87(2)(b) kept running. PO York grabbed § 87(2)(b) by his arm and back of his jersey and forcibly directed him towards a parked car to stop him from running. The officers held § 87(2)(b) against the car, with his stomach against the car. § 87(2)(b) held his arms close to his body and wiggled his body to resist, but PO York pulled at his arms until he was ultimately able to handcuff him after approximately 10 to 15 seconds. PO York denied observing PO Burnett strike § 87(2)(b) during the incident, but learned afterwards from PO Burnett that PO Burnett struck § 87(2)(b) with his baton. PO York denied that § 87(2)(b) was ever forcibly taken to the ground (Board Review 02).

PO Burnett, who is 6'1" tall and 215 pounds according to his CCRB interview sheet, testified to the CCRB that he observed and identified § 87(2)(b) from PO Holway's description, and attempted to stop § 87(2)(b) with PO York. § 87(2)(b) began backpedaling away and was uncompliant with PO Burnett's multiple commands to stop. Once the officers began closing the distance between them, § 87(2)(b) began running in a full sprint across the street. PO York grabbed § 87(2)(b) by his arm and forcibly placed him against a parked vehicle, with his back towards the officers. § 87(2)(b) clenched his hands together in front of his body and began moving his arms and body back and forth to try and get away, elbowing PO Burnett in the process. Both officers attempted to grab § 87(2)(b)'s arms to handcuff him, but § 87(2)(b)'s movements rendered it unsuccessful. In response, PO Burnett took out his asp and struck § 87(2)(b) twice in the same leg. PO Burnett noted that he took this action because grabbing § 87(2)(b)'s arms were unsuccessful, he did not have a taser, and both parties were in too close of proximity to each other for pepper spray to be an option. Immediately after the two strikes, § 87(2)(b) put his hands behind his back and was handcuffed by PO York. § 87(2)(b) was never taken to the ground and never went to the ground at any point (Board Review 03).

§ 87(2)(g)

An officer may use reasonable force to take a lawfully arrested person into custody, or to prevent one's escape from custody. Some factors to consider in determining when to use force are the actions taken by the subject, the size of the subject, and whether the subject is actively resisting custody. NYPD Patrol Guide, Procedure 221-01 (Board Review 06).

§ 87(2)(g)

§ 87(2)(g)

**Allegation C – Abuse of Authority: In front of 212 Throop Avenue, in Brooklyn, Police Officer Michael York failed to provide medical treatment for § 87(2)(b)**

**Allegation D – Abuse of Authority: In front of 212 Throop Avenue, in Brooklyn, Police Officer Patrick Burnett failed to provide medical treatment for § 87(2)(b)**

It is undisputed that PO York and PO Burnett transported § 87(2)(b) to the 79<sup>th</sup> Precinct stationhouse directly from the site of his apprehension at approximately 4:42 p.m. via an unidentified PSA 3 unit. It is also undisputed that § 87(2)(b) arrived at the 79<sup>th</sup> Precinct stationhouse at 4:47 p.m., and was later transported to § 87(2)(b) at 8:26 p.m. Lastly, it is undisputed that § 87(2)(b) vomited up two glassines of heroin at § 87(2)(b) the night of the incident.

PO York's BWC footage, which is split up into two different videos, displays PO York yelling out once the camera falls to the ground during the chase, "He's fucking eating it," "Spit it out," and, "He fucking ate it." The second clip of PO York's BWC footage shows officers searching the nearby fenced area for evidence when PO Burnett, who is on the phone, tells PO York that § 87(2)(b) put narcotics in his sock. PO York states that § 87(2)(b) told him this. PO Burnett and PO York are seen discussing whether § 87(2)(b) still had narcotics in his mouth or in his sock, with PO Burnett stating, "Maybe he still has the drugs in his mouth, and he just fucking tossed a razor blade." PO York responds, "Maybe. Or he's got it in his sock." The officers ultimately decide to transport him to the 79<sup>th</sup> Precinct to be searched (Board Reviews 04 and 07).



PO York BWC1.mp4



PO York BWC2.mp4

PO York testified that, during the chase of § 87(2)(b) he observed § 87(2)(b) take his left hand and extend it outward towards the fence on his left. PO York did not see an object either in § 87(2)(b)'s hand or leave § 87(2)(b)'s hand during this motion. § 87(2)(b) then took his left hand and placed it near his mouth for a few seconds. PO York denied seeing an object in § 87(2)(b)'s hand at this point and denied personally observing § 87(2)(b) ingest anything. However, PO York suspected § 87(2)(b) ingested narcotics at this point because of his hand movements. He denied that there were any additional factors that furthered this suspicion. PO York believed he told PO Burnett, "He's eating it," to relay his suspicion, and told § 87(2)(b) "Spit it out." After § 87(2)(b) was handcuffed, he denied ingesting narcotics to the officers. PO York and PO Burnett searched the area beyond the fence in the event § 87(2)(b) had thrown it in that direction, as suspected, but the search yielded negative results. Upon § 87(2)(b) being placed in the transport vehicle, PO Holway informed the officers via radio that § 87(2)(b) may have placed the narcotics into his sock, leading PO York to believe that the narcotics were in § 87(2)(b)'s sock and no longer suspect that § 87(2)(b) had ingested it. PO York denied that there was any search of § 87(2)(b)'s socks on scene prior to transport (Board Review 02).

PO Burnett testified that, during the chase, he observed § 87(2)(b) make a movement with his left hand towards the fence, leading PO Burnett to believe that § 87(2)(b) threw the narcotics away. PO Burnett denied that § 87(2)(b) made any additional significant movements during the chase. PO Burnett denied that there was any suspicion that § 87(2)(b) had ingested anything, and denied that he was relayed any information that § 87(2)(b) may have ingested anything. PO Burnett was shown PO York's BWC footage during his CCRB interview, in which PO York is heard yelling out during the chase, "He's fucking eating it," "Spit it out," and, "He just fucking ate it." PO Burnett noted that he did not remember hearing these statements at the time of the incident and maintained that he had no suspicion or indication that § 87(2)(b) had ingested anything, believing that § 87(2)(b) had thrown it away. PO Burnett denied that there was any information given to the officers from PO Holway as to where § 87(2)(b) may have stashed the narcotics (Board Review 03).

When an officer observes or suspects that a prisoner has ingested a narcotic or other dangerous substance, the prisoner must be transported directly to the nearest hospital facility from the place of arrest, and under no circumstances should be transported to the command for arrest processing. NYPD Patrol Guide, Section 208-02 (Board Review 08).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation E – Abuse of Authority: In front of 212 Throop Avenue, in Brooklyn, Police Officer Michael York refused to provide medical treatment for § 87(2)(b)**

§ 87(2)(b) alleged that, immediately upon being handcuffed, he requested medical attention from PO York, but was never provided with any (Board Review 01).

BWC footage, from both PO York and PO Burnett's BWCs, show the entire interaction that PO York has at the point § 87(2)(b) is handcuffed before he is placed in the transport vehicle. § 87(2)(b) does not make any request for medical attention at any point (Board Reviews 19 and 20).



PO York's BWC4.mp4



PO Burnett's BWC2.mp4

§ 87(2)(g)

§ 87(2)(g)

**Allegation F – Abuse of Authority: At the 79<sup>th</sup> Precinct stationhouse, Police Officer Michael York refused to provide medical treatment for § 87(2)(b)**

**Allegation G – Abuse of Authority: At the 79<sup>th</sup> Precinct stationhouse, Police Officer Patrick Burnett refused to provide medical treatment for § 87(2)(b)**

It is undisputed that § 87(2)(b) arrived at the 79<sup>th</sup> Precinct stationhouse at 4:47 p.m., and was transported to § 87(2)(b) from the stationhouse at 8:26 p.m.

§ 87(2)(b) alleged that, immediately upon being handcuffed, he requested medical attention from PO York, but was never provided with any. He was transported back to the stationhouse, and began asking various officers within the precinct for medical attention, but only received medical attention at approximately 9:00 p.m., hours after his request (Board Review 01).

PO York's BWC footage, edited via Snag-It, shows PO York and PO Burnett escorting § 87(2)(b) to the holding cells in the 79<sup>th</sup> Precinct stationhouse at 4:52 p.m. § 87(2)(b) states five times, "I need to go to the hospital." PO York replies to § 87(2)(b) "First, you got to go in this way." § 87(2)(b) then states three times, "I need medical attention." While in the holding cell, § 87(2)(b) makes the following statements in the immediate presence of PO York and PO Burnett: "I have to go to the hospital," "I need medical attention! I need medical attention," and, "Yo, I need medical attention as soon as possible. As soon as possible. I need medical attention. I need medical attention. I need medical attention." PO York then replies to § 87(2)(b) "Okay. Alright. I'm going to get you medical attention." (Board Review 09).



PO York BWC3.mp4

PO York, § 87(2)(b)'s arresting officer, testified that § 87(2)(b) was brought back to the 79<sup>th</sup> Precinct stationhouse at approximately 4:45 p.m., at which point he began requesting medical attention. PO York did not believe § 87(2)(b) was directing the request towards any specific officer, but acknowledged being present during this request. § 87(2)(b) was then placed in a holding cell, and PO York was informed by the unidentified desk sergeant at approximately 7:30 p.m. that § 87(2)(b) was going to the hospital. PO York believed that an unknown officer who was assisting the desk sergeant called an ambulance for § 87(2)(b) but denied observing this or being certain of it. PO York explained that he did not personally take any action in calling an ambulance for § 87(2)(b) because of manpower shortage within the precinct, as § 87(2)(b) would have had to have been accompanied by an officer (Board Review 02).

PO Burnett testified that § 87(2)(b) was yelling upon being taken back to the precinct, but he did not recall what § 87(2)(b) was saying. PO Burnett denied that § 87(2)(b) made any requests for medical attention but noted that § 87(2)(b) ultimately went to the hospital. PO Burnett denied knowing why § 87(2)(b) went to the hospital. PO Burnett was shown PO York's BWC footage in which § 87(2)(b) is seen requesting medical attention repeatedly. PO Burnett, who identified himself as being in the video, explained that he did not remember § 87(2)(b) making these requests because § 87(2)(b) was constantly yelling throughout the incident (Board Review 03).

PO York's memo book from July 6, 2018 notes that § 87(2)(b) was transported to § 87(2)(b) at 8:20 p.m. (Board Review 11).

ICAD #D18070623507 shows that the 79<sup>th</sup> Precinct stationhouse requested EMS at 7:46 p.m. regarding a sick prisoner. The ICAD notes that the prisoner was taken to § 87(2)(b) (Board Review 17).

If a prisoner requires medical attention during arrest processing, officers are required to request an ambulance for treatment or removal to the hospital if needed. NYPD Patrol Guide, Section 210-04 (Board Review 10).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.

- § 87(2)(b), § 87(2)(c)  
[REDACTED]
- [REDACTED]
- [REDACTED]
- As of September 11, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (Board Review 13).

## Civilian and Subject Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been a party (Board Reviews 14 and 15).
- PO York has been a member-of-service for four years and has been a subject in one CCRB complaint and three allegations, none of which were substantiated. § 87(2)(g)
- PO Burnett has been a member-of-service for 15 years and has been a subject in four CCRB complaints and 16 allegations, none of which were substantiated. § 87(2)(g)

Squad No.: 12

Investigator: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_

Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_